Supreme Court, U.S.
FILED

001225 NOV 22 2000

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

John A. Hill, Appellant

v.

United States, acting through its Agent
Internal Revenue Service, Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

David Sibley
Attorney At Law
P.O. Box 9610
Corpus Christi, Texas 78469-9610
(361) 882-2377 - Telephone
(361) 882-4412 – Telecopier
Counsel of Record for Petitioner

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29 pp

Questions Presented for Review

The United States has a tax judgment against John Hill. He asserts that the tax judgment is unenforceable under Rule 69(a) which incorporates Florida State Law time deadlines on enforcement of judgments. The United States asserts the judgment is enforceable because it as the sovereign is not bound by limitations.

Is the United States exempt from rules of procedure applicable to other litigants specifically Rule 69(a)? Does 26 U.S.C. §6502 acknowledge the applicability of Rule 69(a) to tax judgments?

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1. 95-02068, Bankruptcy Court, Southern District of Texas, Corpus Christi Division (1998) (not published).
2. No. 98-CV-494, District Court, Southern District of Texas, Corpus Christi, Division (1999) (not published).
3. No. 99-41191, Fifth Circuit (2000) (not published).

Jurisdiction

The Fifth Circuit entered its judgment on June 27, 2000, and denied petition for rehearing on August 25, 2000. Jurisdiction exists under 28 U.S.C. §1254.

This will be received by the Court on January 29, 2001 (within 60 days after the letter by the clerk requiring a corrected petition dated November 29, 2001, taking into account Supreme Court Rule 30, extending the 60 days from Sunday January 28, 2001 until Monday January 29, 2001).

Statutes Involved in Case

28 U.S.C. §6502

... If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

28 U.S.C. §2072

(a) The Supreme Court shall have the power to prescribe rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates) and courts of appeals.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. ...

Florida Statute 95.11(2)

95.11 Limitations other than for the recovery of real property. - Actions other than for recovery of real property shall be commenced as follows: ...

(2) WITHIN FIVE YEARS -

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country, ...

Petition for Writ of Certiorari

John A. Hill ("Hill") asks for Writ of Certiorari for review of the judgment of the Fifth Circuit.

Statement of the Case

United States acting through its agent Internal Revenue Service obtained a tax judgment against John Hill in 1985. The judgment if Florida procedure controls became dormant and unenforceable in 1990. Florida Statute 95.11; Florida Rule 1.550. **See also Massey v. Pineapple Orange**, 87 Fla. 374 (1924); and **Coe v. Finlayson**, 41 Fla. 169 (1899).

Federal Rule of Civil Procedure 69(a) expressly provides that State procedure governs proceedings to enforce a federal judgment. Also, 26 U.S.C. §6502 acknowledges that a time limitation exists on the enforcement of a federal judgment specifically a tax judgment.

The Fifth Circuit held that the tax judgment continues to be enforceable because no time deadline exists on the enforcement of the tax judgment based on the reasoning that the sovereign is not bound by state statute limitations and the sovereign has not clearly waived this immunity.

Reasons Certiorari Should be Granted

The Fifth Circuit Decision in this case conflicts with a decision of this Court specifically **Custer v. McCutcheon**, 283 U.S. 514 (1931). It also conflicts with he decisions of at least two Circuits. **U.S. v.**

Fiorella, 869 F.2d 1425 (11th Cir. 1989); and **U.S. v. Little**, 52 F.3d 495 (4th Cir. 1995).

The **Custer** case involved an Idaho Statute similar to the Florida statute in this case permitting execution only within 5 years of rendition of judgment, and it involved a then existing Standing Rule 73 under a then existing Rule Enabling Statute very similar to the present Federal Rule of Civil Procedure 69(a) under the current Rule Enabling Statute:

> Subject to the provisions of the acts of Congress in relation to executions, **judgments in actions at law shall be enforced in the same manner as such judgments in the State Courts are enforced**, and the State laws in relation to executions, sales, exemptions, rights of purchasers, right of judgment creditors and judgment debtors, redemptions, liens of judgments and of decrees and proceedings supplementary to execution as said provisions now exist or as they shall exist at the time in question are adopted as rules of this Court, and the Marshal of this Court shall conform his proceedings thereto.

The lower courts in **Custer** as the lower courts in this case held this did not apply to the United States because limitations do not bind the sovereign.

The Supreme Court disagreed with the lower Courts:

> The time limited for issuing executions is, strictly speaking, not a statute of limitations. On the contrary, the privilege of issuing an execution is merely to be exercised within a specified time, as are other procedural steps in the course of litigation after it is instituted.... [I]n the interest of uniformity, in the absence of either express state decision or provision by Congress to the contrary, the statute is to be held applicable to all ... including the United States.

Generally, limitations refers to the time allowed to commence litigation not the time allowed for procedural steps within the litigation. Is the United States to argue that it has an infinite amount of time to respond to a motion for summary judgment or to answer discovery because it as sovereign is not subject to statutes of limitations? The Federal Rules of Civil Procedure are valid procedural rules. 28 U.S.C §2072. The present Rule 69(a) is a valid Rule just as the earlier Standing Rule 73 was a valid rule in **Custer**. Rule 69(a) provides:

> The **procedure on execution**, in proceedings supplementary to execution and in aid of execution, **shall be in accordance with the**

> **practice and procedure of the state** in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

On what basis does the United States claim to be exempt from application of procedural Rule 69(a)? It is widely acknowledged that the sovereign is bound by the same rules of procedure as other litigants. See Am Jur United States §57 Application of Procedural Rules:

> As a party to a civil suit, the United States is also subject to the Federal Rules of Civil Procedure to the same extent as any other litigant. The United States is subject to the same rules and is bound by the judgment to the same extent as a private litigant.
> [Supporting citations omitted].

Congress clearly has recognized that a tax judgment is not enforceable indefinitely. Otherwise, the following language in 26 U.S.C. §6502 would make no sense: "the period during which such tax may be collected by levy shall be extended and shall not expire until ... a judgment against the taxpayer ... becomes unenforceable." It is widely acknowledged that statutes should not be construed to render

language superfluous. The Fifth Circuit acknowledges this fundamental principle yet ignored it in this case. **Lackey v. Johnson**, 116 F.3d 149 (5th Cir. 1997) (Every word in a statute should be construed to have some operative effect); **Forsyth v. Barr**, 19 F.3d 1527 (5th Cir. 1994) (Maxim of statutory construction precludes one part being read as to render another superfluous). Also, the Fifth Circuit opinion in this case conflicts with decisions of the 4th and 11th Circuits. Specifically, in **U.S. v. Fiorella**, 869 F.2d 1425 (11th Cir. 1989), the 11th Circuit held:

> Generally, the United States is not subject to local states of limitations. However, Alabama §6-9-190, which effectively limits the time for issuing executions on judgments is not a statute of limitation and operates the same against the United States as ... against private parties ....

Also, in **U.S. v. Little**, 52 F.3d 495 (4th Cir. 1995), the 4th Circuit held that the United States was barred from collecting a tax judgment gone dormant by Maryland state law.

Also, **U.S. v. Pierce**, 231 B.R. 890 (1998) states:

> [T]he government had to enforce [its judgment] pursuant to state laws which required that a judgment be revived if it had become dormant under the

> applicable state statute.... Thus, the United States had to revive a judgment under the state law in which the district which imposed the judgment sat before [it] could be enforced.

Thus, the Fifth Circuit opinion is not only contrary to a decision by the United States Supreme Court. It is also contrary to decisions of two Courts of Appeals and a bankruptcy court.

Appellant asserts the Federal Debt Collection Procedures Act does not apply because the judgment became dormant before the effective date of the act, and the act does not revive an already dormant judgment. The act cannot reasonably be construed to revive dormant judgments, because this would disrupt settled expectations including land titles.

Conclusion

The United States is bound by Rule 69(a) which adopts relevant Florida procedures just like other litigants. Federal Rule of Civil Procedure 69(a) is a valid rule of procedure just like innumerable other time limits in the rules. Just as the United States must answer Requests for Admission within 30 days like other litigants, the United States must comply with Rule 69(a) just like other litigants. Rule 69(a) and the adopted Florida Statute are not strictly speaking statutes of limitations, so the principle that the sovereign is not bound by statutes of limitations does not strictly apply. A statute of limitations

controls the time for filing suit not the time for taking procedural steps within the suit (judgment collection is simply a continuation of the suit). The sovereign when it enters a court is subject to the same rules of procedure as other litigants absent an express exception. The United States has not identified any applicable exception to Rule 69(a). Valid policy reasons exist why judgments are enforceable for a limited time. The federal rules of procedure adopt the state resolutions of the relevant policy considerations. Congress intended tax judgments to have a limited life as determined by applicable rules of procedure. 26 U.S.C. §6502. The applicable rule should be honored.

Respectfully Submitted,

David A. Sibley
Attorney At Law
P.O. Box 9610
Corpus Christi, Texas 78411
(361) 882-2377 - Telephone
(361) 882-4482 - Telecopier
Attorney of Record for Petitioner

Appendix

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U.S. COURT OF APPEALS
FILED
JUN 27 2000
CHARLES R. FULBRUGE III, CLERK

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 99-41191

In the Matter of: John A. Hill,
Debtor.

John A. Hill,
Appellant,
Versus

UNITED STATES OF AMERICA, Acting through its agent,
The Internal Revenue Service,
Appellee.

Appeal from the United States District Court
For the Southern District of Texas
(C-98-CV-494)

Before GARWOOD, DeMOSS, and PARKER, Circuit Judges.

PER CURIUM: *

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*Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R.47.5.4.

Appellant John Hill ("Hill") appeals from an order of the district court affirming the bankruptcy court's grant of summary judgment to the United States in Hill's adversary proceeding that he bought to declare that his tax liability for 1978 was uncollectible as a matter of law. There is essentially one substantive issue in this appeal, that is, whether the district court properly affirmed the bankruptcy court's determination, on reconsideration, that Hill's 1978 income tax liability, which had been reduced to a judgment in 1985, remained collectible despite the alleged running of Florida's statute of limitations on enforcement of judgments purportedly made applicable to the 1985 judgment by 26 U.S.C. §6502(a), prior to the filing of Hill's bankruptcy petition.

We review the bankruptcy court's findings of fact for clear error, but consider questions of law de novo. See **Matter of Herby's Foods, Inc.**, 2 F.3d 128, 130 (5th Cir. 1993). Here, the bankruptcy court's factual determinations are not in dispute, and the relevant issue is one of law, that is, a question of statutory interpretation as to whether §6502 incorporates state statute of limitations.

Hill argues simply that his 1978 tax liability became uncollectible under §6502 when the 1985 tax judgment became "unenforceable" under Florida law. He relies on Florida's five-year statute of limitations for actions other than for the recovery of real property found at Section 95.11 of the Florida Statutes. Under Florida's statute of limitations, Hill argues that the 1985 judgment became "dormant" and unenforceable on March 31, 1990, five years after its entry.

While Hill does acknowledge and agree with the government that generally speaking, the United States is not subject to state statues of limitations with respect to enforcing a judgment in its favor, he argues that where the United States expressly waives its immunity, the state statutes govern. It is Hill's contention that Congress's inclusion of the phrase "until the judgment ... becomes unenforceable," is an express waiver of immunity because that is the only possible reason for including such language. Hill contends that there is nothing other than state statutes of limitations to which Congress could have been referring when it enacted this language because expiration of such limitations statutes is the only way a judgment could become "unenforceable."

As noted above, the district court and the bankrutpcy court both explicitly rejected the contention that the "becomes unenforceable" language constitutes a waiver of the United States' immunity from state statutes of limitations because it "is not a

clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability."

Having carefully reviewed the issues presented by Appellant Hill and having fully considered the briefs, the record excerpts, the record, and the arguments presented at oral argument, we are persuaded that the order of the district court affirming the judgment of the bankruptcy court should be and the same is hereby AFFIRMED for the reasons stated herein.

U.S. Court of Appeals
FILED
AUGUST 25, 2000
CHARLES R. FULBRUGE, III, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41191

In The Matter Of: JOHN A. HILL
Debtor

JOHN A. HILL,
Appellant
v.
UNITED STATES OF AMERICA, Acting through its agent,
The Internal Revenue Service,
Appellee

Appeal from the United States District Court for the Southern District of Texas, Corpus Christi

---

ON PETITION FOR REHEARING

Before GARWOOD, DeMOSS and PARKER, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing is Denied.

ENTERED FOR THE COURT:

s/Harold R. DeMoss

United States Circuit Judge

REHG-2

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41

FOR STAY OF MANDATE

United States District Court
Southern District of Texas
ENTERED
Aug 17 1999
Michael N. Milby
Clerk of Court

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN A. HILL	*	
Appellant	*	C.A.
V.	*	NO. C-98-494
THE UNITED STATES OF AMERICA	*	
Appellee	*	

ORDER AFFIRMING BANKRUPTCY COURT

The Court agrees with the decision of the Bankruptcy Court that the judgment rendered in favor of the United States against the appellant remains enforceable. It is well established that state statutes of limitations do not run against the United States. *United States v. Summerlin, 60 S.Ct. 1019, 1020 (1940); Famers Home Admin. v. Muirhead, 42 F.3d 964 (5th Cir. 1995); United States v. Peoples Household Furnishings, Inc., 75 F.3d 252 (6th Cir. 1996).* The language in 26 U.S.C. §6502 stating that the period during which a tax may be collected by levy "shall

be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable" does not waive the United States' immunity from state statutes of limitations. The fact that the statute contemplates that judgments may becomes unenforceable is not a clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability .

Accordingly, the judgment in favor of the United States is enforceable under the terms of the Federal Debt Collect Procedure Act, 28 U.S.C. §3001 et seq. The judgment is within the scope of that statute because it was rendered within ten years of that statute's effective date. See 28 U.S.C. §3305. Because the judgment was enforceable when the statute took effect in 1991, that statute controls enforcement of the judgment without concern that the new statute revives a dormant judgment in violation of due process.

The judgment of the bankruptcy court is AFFIRMED.

ORDERED this 16th day of August, 1999.

S/ H.W. Head

H.W. HEAD, Jr.
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas
Entered
Aug 17 1999
Michael N. Milby
Clerk of Court

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN A. HILL	*	
Appellant	*	C.A.
V.	*	NO. C-98-494
THE UNITED STATES OF AMERICA	*	
Appellee	*	

Final Judgment

The Court renders final judgment affirming the decision of the Bankruptcy Court that the judgment in favor of the United States remains enforceable.

ORDERED this 16h day of August, 1999
s/H.W. Head

H.W. Head, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:	*
	* 94-20635-C-7
JOHN A. HILL	* CHAPTER 7
DEBTOR	*
	*
----------	*
	*
JOHN A. HILL	*
	*
V.	* ADVERSARY
	* 95-2068-C
THE UNITED STATES OF AMERICA,	*
ACTING THROUGH ITS AGENT,	*
THE INTERNAL REVENUE SERVICE	*

MEMORANDUM OPINION & ORDER GRANTING
UNITED STATES' MOTION TO RECONSIDER
ORDER GRANTING MOTION OF
JOHN A. HILL FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
CROSS MOTION FOR SUMMARY JUDGMENT

On this day came on for consideration the Motion for Reconsideration of Order Granting

Motion of John A. Hill for Partial Summary Judgment, filed by the Defendant, the United States of America. The Court, having heard the arguments of counsel and following review of the Court's prior Memorandum Opinion, the summary judgment evidence, and relevant case law, finds that the Memorandum Opinion and Order Granting Motion of John A. Hill for Partial Summary Judgment entered February 11, 1998, should be vacated and the Cross Motion for Summary Judgment of the United States should be granted.

Background

Plaintiff was arrested, convicted, and institutionalized in Florida in 1978 for "drug trafficking". Plaitniff did not file his income tax return for calendar year 1978. Incarceration does not excuse tax form filing requirements, and therefore the Internal Revenue Service ("IRS") was authorized and did file a "substitute return" for Plaintiff, imputing the alleged, ill-gotten, income and calculating therefrom an income tax of nearly four million dollars.

The IRS reduced the resulting tax assessment to a judgment, taken by default, in the United States District Court for the Southern District of Florida, Miami Division, on April 30, 1985. The judgment was taken while Plaintiff was incarcerated. The IRS recorded a certified copy of that judgment in the Nueces County Clerk's office in Corpus Christi,

Texas on December 7, 1992.

In 1994, Plaintiff filed the underlying bankruptcy case, scheduling income tax liabilities for the calendar years 1978 and 1988. The parties hereto do not dispute that the 1988 income tax liability was discharged in bankruptcy. The IRS takes the position in its answer to this Adversary Proceeding and in its response to the Plaintiff's Motion for Partial Summary Judgment, that the 1978 tax liability was not discharged because Plaintiff did not file a return for that tax year (the IRS filed a substitute return) and, therefore, that tax liability was excepted from discharge pursuant to 11 U.S.C. §523(a)(1)(B)(ii). That section allows a discharge of an income tax liability only if the Debtor filed a return or agreed to a return filed by the "Service."

The Plaintiff agrees that the 1978 tax liability was not discharged by his bankruptcy pursuant to 11 U.S.C. §523(a)(1)(B). Plaintiff filed this Adversary Proceeding to obtain a declaration that the 1978 tax is no longer collectable pursuant to 26 U.S.C. §6502(a).

DISCUSSION

The issue before the Court is whether the debt owed to the IRS for Plaintiff's 1978 tax liability is collectible. The Court, upon reconsideration, agrees with the United States that State statutes of limitations are unenforceable against the United States. **United States v. Summerlin**, 310 U.S. 414,

416-17 (1940); **Farmers Home Administration v. Muirhead**, 42 F.3d 964, 965-66 (5th Cir. 1995); **U.S. v. Peoples Household Furnishings, Inc.**, 75 F.3d 252 (6th Cir. 1996). Moreover, because the Court now finds that the Florida dormancy statute does not apply to the federal government, the Federal Debt Collection Procedure Act applies and the judgment remains enforceable for at least 20 years. 28 U.S.C. §3201.

CONCLUSION

For the reasons set forth above, the Court finds that the Motion for Reconsideration should be granted, that the Court's Memorandum Opinion entered February 11, 1998, should be vacated and that the Cross Motion for Summary Judgment filed by the United States should be granted.

It is therefore ORDERED that the Motion for Reconsideration of Order Granting Motion of John A. Hill for Partial Summary Judgment is hereby GRANTED.

It is further ORDERED that the Memorandum Opinion and Order Granting Partial Summary Judgment entered February 11, 1998, is hereby VACATED.

It is further ORDERED that the Cross Motion for Summary Judgment filed by the United States of America is hereby GRANTED.

At Corpus Christi, Texas on the 20th day of August, 1998.

S/ Richard Schmidt

RICHARD S. SCHMIDT
United States Bankruptcy Judge

Supreme Court, U.S.
FILED
MAR 2 2001
OFFICE OF THE CLERK

No. 00-1225

In the Supreme Court of the United States

JOHN A. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

BARBARA D. UNDERWOOD
Acting Solicitor General
Counsel of Record

CLAIRE FALLON
Acting Assistant Attorney General

RICHARD FARBER
KENNETH W. ROSENBERG
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

13 pp

QUESTION PRESENTED

Whether a judgment for federal income taxes is subject to a state statute of limitations.

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In the Supreme Court of the United States

No. 00-1225

JOHN A. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-14) is unpublished, but the decision is noted at 224 F.3d 766 (Table). The opinion of the district court (Pet. App. 17-18) is unofficially reported at 99-2 U.S. Tax Cas. (CCH) ¶ 50,821. The opinion of the bankruptcy court (Pet. App. 20-24) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 2000. The petition for rehearing was denied on August 25, 2000. The petition for a writ of certiorari was filed on November 22, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner was arrested, convicted and incarcerated in 1978 for drug trafficking. When he failed to file a federal income tax return for 1978, the Internal Revenue Service prepared a substitute return for him for that year as authorized by Section 6020 of the Internal Revenue Code, 26 U.S.C. 6020. Pet. App. 21.

The United States thereafter brought suit to obtain a judgment for the resulting tax assessment of approximately four million dollars. On April 30, 1985, a default judgment was entered in that suit by the United States District Court for the Southern District of Florida. On December 7, 1992, a certified copy of the judgment was recorded in Nueces County, Texas. Pet. App. 21-22.

2. In 1994, petitioner filed a petition for relief under Chapter 7 of the Bankruptcy Code in the bankruptcy court for the Southern District of Texas. In the petition, petitioner listed his 1978 income tax liability as an outstanding debt. Pet. App. 22. Petitioner commenced an adversary proceeding in that case, however, to obtain a declaration that his 1978 federal tax liability was uncollectible. He contended that the statute of limitations on collection of federal taxes in 26 U.S.C. 6502(a) incorporates applicable state statutes of limitations and that, under the applicable Florida statutes, the debt for his 1978 federal taxes could no longer be collected.

The bankruptcy court granted summary judgment to the United States. The court held that 26 U.S.C. 6502(a) incorporates federal, rather than state, statutes of limitations and that, under the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 et seq., the statute of limitations on collection of the judgment

for federal taxes does not expire for 20 years after the judgment was entered. Pet. App. 22-23.

3. The district court affirmed. Pet. App. 17-18. The court noted that "[i]t is well established that state statutes of limitations do not run against the United States." *Id.* at 17. The court noted that the controlling federal statute specifies that, if a timely court proceeding for collection of a federal tax is commenced, the period for collection is extended "until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable." 26 U.S.C. 6502(a). The court stated that the fact that this statute contemplates that judgments may, at some point, become unenforceable "is not a clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability." Pet. App. 18. The court concluded that the judgment was not subject to the state statute of limitations and was instead enforceable under the federal statute of limitations contained in the FDCPA. *Ibid.*

4. The court of appeals affirmed. Pet. App. 11-14. The court agreed with the lower courts that 26 U.S.C. 6502(a) does not waive the immunity of the United States from state statutes of limitations, for that statute provides no "clear statement" of intent to make judgments in favor of the United States subject to state limitations on enforcement. Pet. App. 13.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. a. This Court has long concluded that "the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless congress has clearly manifested its intention that they should be so bound." *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U.S. 120, 125 (1886). In *United States* v. *Summerlin*, 310 U.S. 414 (1940), the Court thus noted that "[i]t is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *Id.* at 416 (citations omitted). Accordingly, "[w]hen the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement." *Id.* at 417. The Court has broadly stated that the rule described in *Summerlin* applies whenever "the right at issue was obtained by the Government through, or created by, a federal statute" and "the Government was proceeding in its sovereign capacity." *United States* v. *California*, 507 U.S. 746, 757 (1993).

In *United States* v. *Overman*, 424 F.2d 1142 (1970), the Ninth Circuit held that a judgment for a federal tax liability is not subject to limitations and is enforceable at any time. In reaching that conclusion, the court rejected the argument that collection of a judgment for a tax assessment was subject to a state statute of limitations. The court stated that this argument "overlooks the established rule that a state statute of limitation cannot run against the United States unless a federal statute permits." *Id.* at 1147 n.7 (citing, e.g., *United States* v. *Summerlin*, *supra*). See also *Bresson* v. *Commissioner*, 213 F.3d 1173, 1178 (9th Cir. 2000) (in

seeking to impose liability for taxes on transferee who holds assets of taxpayer, the United States is not subject to limitations of state law because the right to collect federal taxes "clearly derives from the operation of federal law" and "in its efforts to collect taxes, the United States unquestionably is acting in its sovereign capacity").

2. a. Against this background, Congress enacted a federal statute of limitations for the collection of federal tax liabilities in 26 U.S.C. 6502(a). During the period relevant to this suit, that statute provided that an assessment may be collected either by levy or by judicial proceedings if the levy is made or the proceedings begun within six years after the date of the assessment.[1] The last sentence of the statute further provided that "[t]he period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer." 26 U.S.C. 6502(a) (1988). In 1988, Congress amended the last sentence of Section 6502(a) to provide as follows:

> If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 1015(u)(1), 102 Stat. 3342, 3573, as technically corrected by Revenue Reconciliation Act of

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[1] 26 U.S.C. 6502(a) was amended in 1990 to enlarge the six-year collection period to ten years. Pub. L. No. 101-508, § 11317(a)(1), 104 Stat. 1388-1458.

1989, Pub. L. No. 101-239, § 7811(k)(2), 103 Stat. 2412. The purpose of this amendment was to ensure that "if a timely proceeding in court for the collection of tax is commenced, the period during which the tax may be collected by levy shall not expire as long as the tax is collectible." H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. Pt. 2, at 6 (1988).

b. Petitioner asserts (Pet. 6) that, in enacting this 1988 amendment to 26 U.S.C. 6502(a), Congress waived the well-established immunity of the United States from state statutes of limitations and agreed to abide by such limitations with respect to the collection of federal taxes. That assertion, however, finds no support in the language or history of the statute. Although the last sentence of Section 6502(a), as amended in 1988, makes reference to the possibility that judgments against taxpayers may become unenforceable due to being "satisfied" or for other unspecified reasons (26 U.S.C. 6502(a)), nowhere does this statute state or even imply that the United States has agreed to be bound by state statutes of limitations in the collection of federal tax debts.

Instead, as we have just noted, the purpose of the 1988 amendment was simply to extend the period during which a tax could collected by administrative levy. H.R. Conf. Rep. No. 1104, *supra*, at 6. Nothing in the text or history of this amendment suggests that Congress intended to curtail the ability of the United States to collect unpaid taxes by subjecting the federal government to state statutes of limitations. As the courts below correctly concluded, this statute fails to provide any "clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability." Pet. App. 14, 18.

3. a. Petitioner also contends (Pet. 5-6) that state statutes of limitations apply to judgments for federal taxes under Rule 69(a) of the Federal Rules of Civil Procedure. That Rule, however, does not subject the United States to state statutes of limitations, for it merely specifies that (Fed. R. Civ. P. 69(a) (emphasis added)):

> [t]he procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, *except that any statute of the United States governs to the extent that it is applicable.*

The state statutes of limitations for the enforcement of judgments are not part of the state "practice and procedure" on the "execution" of judgments that is incorporated by this Rule for the enforcement of federal decrees. See *United States* v. *Overman*, 424 F.2d at 1147 ("the judgment itself is not subject to limitations and is enforceable at any time"). Moreover, Congress *has* provided a specific federal rule for the enforcement of judgments obtained by the United States after May 29, 1981. See 28 U.S.C. 3005. Under that statute, which is known as the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 *et seq.*, a judgment in favor of the United States creates a lien on the real property of the judgment debtor that is effective for a period of 20 years and, with approval of the court, may be renewed for an additional 20-year period. 28 U.S.C. 3201.

The judgment obtained by the United States against petitioner was entered in 1985 and is therefore subject

to the FDCPA. Pet. App. 12. Under the FDCPA, the lien established by that judgment remains enforceable at least until the year 2005. Since Rule 69(a) of the Federal Rules of Civil Procedure expressly incorporates the rules established by "any statute of the United States" (Fed. R. Civ. P. 69(a)), the FDCPA is controlling in this case. Enforcement of the judgment obtained against petitioner is thus authorized by the FDCPA regardless of any contrary state rules of practice or procedure concerning the enforcement of judgments generally.

b. Petitioner errs in contending (Pet. 3-4) that the decision of the court of appeals in this case conflicts with *Custer* v. *McCutcheon*, 283 U.S. 514 (1931), *United States* v. *Fiorella*, 869 F.2d 1425 (11th Cir. 1989), and *United States* v. *Little*, 52 F.3d 495 (4th Cir. 1995). None of the judgments involved in those cases were subject to the FDCPA, and the decisions in those cases thus cannot (and do not) support petitioner's reliance on Rule 69(a).

Both *Custer* v. *McCutcheon*, *supra*, and *United States* v. *Fiorella*, *supra*, were issued *before* enactment of the FDCPA. Those decisions thus plainly do not address the rights of the United States under that statute.[2] And, although *United States* v. *Little*, *supra*,

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[2] Moreover, in *Custer* v. *McCutcheon*, 283 U.S. at 519, the Court emphasized that it was addressing a state rule of practice that was "not a statute of limitations" and that the plaintiff in that case was "not precluded from bringing an action upon the judgment, but merely from having an execution [issued] in the form provided by state law." Similarly, in *United States* v. *Fiorella*, 869 F.2d at 1426-1427, the court noted that "the United States is not subject to local statutes of limitations" and emphasized that the question in that case did not concern a statute of limitations directly but instead concerned only whether a judgment that had

was decided *after* enactment of the FDCPA, the court concluded that the Act did not apply to either of the two judgments at issue in that case—a 1978 judgment against the taxpayer and a 1982 consent judgment that had been rendered against property held in the names of third parties as nominees for the taxpayer. The court held that the 1978 judgment was not subject to the FDCPA because it antedated the effective date of the Act by more than 10 years. 52 F.3d at 498. The court further held that the consent judgment was not subject to the FDCPA because it was not an adjudication of liability but was, instead, an adjudication that certain property could be used to satisfy a pre-existing liability. *Id.* at 498-499. Because the decisions cited by petitioner do not address the rights of the United States under the FDCPA, they cannot be said to conflict with the decision in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

BARBARA D. UNDERWOOD
Acting Solicitor General

CLAIRE FALLON
Acting Assistant Attorney General

RICHARD FARBER
KENNETH W. ROSENBERG
Attorneys

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lapsed 20 years after its entry "is now capable of being revived under Alabama law."